



EX PARTE OR LATE FILED

Ernest B. Kelly, III, *President*

Telecommunications  
Resellers  
Association

1730 K Street, N.W.  
Suite 1201  
Washington, D.C. 20006

Tel: (202) 835-9898  
Fax: (202) 835-9893

March 1, 1999

RECEIVED

MAR 1 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable William Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B201  
Washington, D.C. 20024

RE: **CC Docket No. 98-147, Deployment of Wireline Services Offering  
Advanced Telecommunications Capability**

Dear Mr. Chairman:

In order to fully consider the impact of the U.S. Supreme Court's landmark decision in *Iowa Utilities Board et al. V. FCC*, the Commission last month deferred indefinitely action in the advanced services proceeding (CC Docket No. 98-147). The Telecommunications Resellers Association agrees that the deferral was both necessary and appropriate with respect to certain key issues in the proceeding.

TRA submits, however, that one pivotal issue – the applicability of Section 251(c)(4)'s resale requirement to advanced services regardless of whether such services are classified as telephone exchange service or exchange access – should be considered on an expedited basis. We believe prompt implementation of this requirement would accelerate the availability of advanced services to subscribers throughout the Nation by greatly increasing the number of carriers offering such services. In addition, it would minimize the "headstart" advantage incumbent LECs enjoy over competing carriers in the advanced services marketplace.

In the *Memorandum Opinion and Order* regarding the deployment of advanced services, the Commission confirmed that advanced services were telecommunications services that triggered "the obligations imposed by sections 251 and 252 of the Act," although it stopped short of deciding "whether, or to what extent, specific xDSL-based services offered by incumbent LECs are 'telephone exchange service' or 'exchange access'."<sup>1</sup> Instead, the Commission tentatively concluded that "advanced services marketed by incumbent LECs generally to residential or business users or to Internet service providers should be deemed subject to the section 251(c)(4) resale obligation, without regard to their classification as telephone exchange service or exchange

<sup>1</sup> 34, 40

No. of Copies rec'd 012  
List ABCDE

access.”<sup>2</sup> The Commission based this conclusion on its expectation that “advanced services will be offered predominantly to ordinary residential or business users or Internet service providers,” rather than telecommunications carriers. Therefore, “advanced services are fundamentally different from the exchange access services the Commission referenced in the *Local Competition Order* and concluded were not subject to Section 251(c)(4).”<sup>3</sup>

The record fully supports the Commission’s tentative conclusion and the reasoning underlying it. The sole argument offered in opposition to the Commission’s assessment is the erroneous claim by incumbent LECs that advanced services are not provided by them “at *retail* to subscribers who are not telecommunications carriers.”<sup>4</sup> The gist of this argument is that advanced services will be offered on a predominantly (if not exclusively) wholesale basis as input components of retail Internet services.

Contrary to this claim, advanced services are being aggressively marketed today by incumbent LECs to end-user residential and business customers, as well as Internet service providers (ISPs).<sup>5</sup> Moreover, even if ISPs do currently constitute a significant percentage of the target market for incumbent LEC advanced services, ISPs have long been classified as end users within the Commission’s access charge regime. And a service provided to an end-user is by definition a retail service. Finally, use by ISPs of advanced services in providing Internet access to their customers does not transform this otherwise retail offering into a wholesale service. Just as the sale of computer chips to a manufacturer of computers is a retail transaction in which the computer manufacturer is the consumer of the computer chips, the sale of advanced services to an ISP likewise is a retail, rather than a wholesale, transaction.

---

<sup>2</sup> ¶ 189

<sup>3</sup> ¶ 188

<sup>4</sup> See, e.g., BellSouth Corporation Reply Comments (at 16 – 17) and US WEST Communications, Inc. Reply Comments (at 9 – 11) filed in CC Docket No. 98-147 on October 16, 1998.

<sup>5</sup> Cincinnati Bell Telephone Company Comments filed in CC Docket No. 96-147 on September 25, 1998 (“CBT does not dispute that advanced telecommunications services will be offered to retail customers”); [www.bellatlantic.com/foryourhome/](http://www.bellatlantic.com/foryourhome/) (“Bell Atlantic, we bring the Internet into your home the way you want. . . With Infospeed DSL, you command the full potential of the online world with an ultra-fast, always-on Internet connection that is delivered right through your existing phone line.”); [www.pacbell.com/products/residential/](http://www.pacbell.com/products/residential/) (Well, get ready for takeoff because Pacific Bell has just announced that in 1999, it is offering ‘always on’ ADSL service with guaranteed connection speeds for as low as \$39 a month.”); SBC, Dell Computer Make Pact to Roll Out ADSL,” ISDN News, Vol. 11, No. 20 (October 6, 1998) (“The pricing of SBC’s services vary. The ADSL Home Pact, which is designed for residences, costs \$89 a month and provides 384 Kbps of upstream bandwidth and 128 Kbps of downstream bandwidth.”); “Bell Atlantic Not Worried by Cable Broadband Competition,” Communications Today (November 18, 1998) (“Bell Atlantic DSL rollout has targeted residential customers rather than businesses and is more designed as a consumer service.”); “In 1998, Broadband Services Gained More Traction,” Communications Today, January 5, 1999, 100 (“US WEST has made aggressive efforts to market [xDSL services] with mall exhibits, cold calls and direct marketing.”).

TRA believes the Commission should move quickly and forcefully to implement the clear statutory obligation of incumbent LECs to make advanced services available to competing carriers at wholesale rates. By acting promptly to increase the number of carriers marketing advanced services, the Commission would be acting in a manner that is wholly consistent with its statutory obligation under Section 706 of the Act -- to help speed the deployment of advanced services to consumers across the United States. And, again, swift enforcement of the resale requirement also would minimize the "headstart" advantage incumbent LECs enjoy in the advanced services marketplace.

For these reasons, TRA strongly urges the Commission to act now to confirm that advanced services are subject to the Section 251(c)(4) resale obligations, without regard to their classification as telephone exchange service or exchange access.

With best wishes,

Cordially,

A handwritten signature in dark ink, appearing to read "Ernest B. Kelly" with a stylized flourish at the end.

Cc: Commissioner Susan Ness  
- Commissioner Michael K. Powell  
- Commissioner Harold Furchtgott-Roth  
Commissioner Gloria Tristani  
Lawrence E. Strickling  
Christopher J. Wright